IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 967 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SAIYED MUNIR SAIYED AMIR SAIYED
Versus
SURAT OF GUJARAT

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Appearance :
MR MH BAREJIA for Appellant, MR PS CHAMPANERI for Appellant.
MS HANSA PUNANI, APP for Opponent.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 06/12/2007

ORAL JUDGMENT

1. This appeal arises out of a judgment and order dated 21-9-1996 rendered by learned Additional Sessions Judge, Surat in Sessions Case No.178 of 1992.

2. Appellant was the original accused. As per the prosecution version, on 14-5-1992 when complainant, Ashwinbhai, was outside his house at about 9 O' Clock at night, he saw that there were some children quarreling. Ashwinbhai separated them. One child went and called the accused, who gave three knife (Katari) blows to the complainant on and around his stomach. The appellant was charged with having committed offence punishable under Section 307 of the Indian Penal Code.

3. Learned Additional Sessions Judge by impugned judgment convicted the appellant for having committed offence under Section 307 of the Indian Penal Code and sentenced him to rigorous imprisonment for seven years and fined him Rs.500/-.

4. P.W.1, Dr. Shrirang Vaman was examined at Exh.9. He had treated Ashwinbhai. On 14-5-1992, he was discharging his duties as medical officer at Maskati Hospital, Surat. He found following three injuries on the complainant, (i) incised wound of 1 inch X ½ inch X ¼th inch on the right side of the stomach (ii) incised wound of 1 inch X ½ inch X ½ inch on the center of the stomach on the upper portion (iii) incised wound of 1 inch X ½ inch X 2 inches on the right side of the stomach. He opined that such injuries could have been caused with knife and could have caused death of the injured. He stated that the injured had given the history of being attacked with knife.

4.1 In his cross-examination, he stated that the pulse rate of the injured was 78 beats per minute. He stated that ordinarily a person's heart would beat 68 to 72 times every minute. If the person is close to death, his heart would beat 100 times per minute. He agreed that, considering the pulse rate of the injured, it cannot be stated that he was close to death.

5. As per the injury certificate of this doctor, the patient was discharged upon being cured on 22-5-1992.

6. Complainant, Ashwinbhai, who was injured himself was examined as P.W.2, Exh.11. In his deposition, he stated that on 14-5-1992 at about 9:30 at night he had returned home with his wife. When he reached his house, he saw that few children of the locality were quarreling. He, therefore, separated them. One of the boy's came back with Munir, i.e. accused. After some heated exchange between them the accused took out a knife and gave three blows on his stomach. After giving first blow accused started running. The complainant, therefore, ran behind him, at which time the accused gave two more blows.

6.1 In his cross-examination, he stated that even after receiving the knife blows, he did not fall down on the ground. He had gone to the hospital on a scooter, which was driven by his friend, Hitesh. He stated that he is an active member of Bajrang Dal since 6 to 7 years and attends the office frequently. He stated that after the incident, a case of rioting was filed against him. He denied that after the first blow was given by the accused he started running away and the accused chased him. He could not state as to how many persons by the name of Munir reside in Kshetranjiwad. He did not remember whether to the doctor he had given the name of the accused. He stated that in the year 1994, cases of arson and looting in muslim areas have been filed against him. He stated that after receiving the injuries and till he was discharged from the hospital except when he was operated upon he had never lost consciousness.

7. Prosecution examined several witnesses, supposed to be eye-witnesses to the incident, however, some of these witnesses turned

hostile.

8. Jagdishbhai, P.W.6, Exh.20 is the father of Ashwinbhai. Though he claimed to be an eye-witness and narrated before the Court the incident of his son getting knife blows by the accused, there are large number of contradictions in his deposition, raising serious doubt about his being an eye-witness at all.

8.1 In his cross-examination, he denied that in the year 1994 against his son, Ashwin, cases of looting and arson were filed. This is in contrast to the admission of his son himself. There are number of omissions and improvements in his deposition with which he was confronted. To which he explained that the same may have been on account his being under tension while giving his statement to the police. In particular, he was confronted with the contradiction to the effect that in his statement before the police he had never stated that after the accused gave one blow to Ashwin on the side Ashwin ran after him at which time the accused gave another blow. To this also, he stated that he may have forgotten to mention this detail to the police since he was under tension. He was also confronted with his statement before the police that accused ran after his son, caught him and gave more blows. To this he stated that the incident took place as narrated by him in the deposition and if there is any other version, the same is false. He did not know the name of the father of the accused. However, when pointed out that before the police he had given name of the father of the accused, he stated that he had not given any such description.

8.2 On account of such multiple contradictions and improvements, testimony of this witness cannot be relied upon. It is primarily doubtful whether he had witnessed the incident at all.

9. P.W.10, Jayeshbhai Chandubhai, Exh.24 also claims to be an eye-witness. In his deposition also there is material contradiction. Before the Court he stated that after the accused gave one blow to Ashwin, accused started running, Ashwin, therefore, ran after him, at which time, the accused turned around and gave two more blows. He was, however, confronted with his statement before the police wherein he had not mentioned the sequence in above fashion, to which he stated that though he had given the narration as given in the deposition but it is possible that police may not have noted down accordingly. Very similar is the case of witness, Ajaybhai, P.W.11, Exh.25. He had also changed the version before the Court compared to what was given before the police. In fact, this witness in his deposition stated that since he was standing at some distance, he could not see as to how many blows the accused gave. He stated that Ashwinbhai was carried to the hospital in his car. This is in complete contrast to the statement of Ashwinbhai, who stated that he was carried to the hospital on a scooter which was driven by Hitesh. Though this witness also had given full description of the accused in his statement before the police, in his cross-examination he admitted that he had never seen the accused before the date of the incident. Parmanand, P.W.12, Exh.27 also claims to be an eye-witness. He also stated that after giving the first blow accused started running from the spot, upon which Ashwin chased him, at which time the accused gave two more blows to Ashwin. In his cross-examination, it was pointed out that he had not so stated before the police, to which he stated that since his statement was recorded four years back, he does not remember the full details. To a suggestion that after receiving first blow Ashwinbhai had started running at which time he received two more blows, the witness stated that he is not certain.

10. Pradyuman Zala, P.W.13, Exh.28 was an investigating officer. Apart from proving contradictions and improvements noticed herein above, through this witness the defence also was successful in extracting a statement that during the investigation it was not revealed that after giving one blow to Ashwin the accused started running away, upon which Ashwin chased him and at that time accused turned around and gave two more blows to him.

11. The prosecution had recovered the knife allegedly used by the accused. At his instance, a panchnama was also drawn.

12. From the above evidence, it can be seen that there are certain improvements and contradictions in testimony of the witnesses examined by the prosecution. Significantly, these contradictions hover around the question of Ashwin having chased the accused after receiving the first blow and at that time having received two more blows. Apparently before the police, this aspect was never revealed. The defence theory appears to be that the injured was an active member of Bajrang Dal and, therefore, had many enemies in the area and was attacked by someone else, who since remained unidentified the appellant herein was sought to be falsely involved.

13. Insofar as the presence of the accused at the scene of the offence and his involvement in giving a blow is concerned, there can be hardly any doubt. The injured, complainant, himself has stated that he was given one blow with the help of knife by the appellant. Corresponding to this the injury is spotted by the doctor as one incised wound of 1 inch X ½ inch X ½ inch on the center of the upper part of the stomach. The knife was also recovered at the instance of the accused. His involvement thus far, therefore, is doubtless.

14. The question is, did the appellant give two more blows to the Ashwinbhai?

15. As noted earlier, there are number of improvements made by the witness for the prosecution in this regard. Apparently, the witnesses have changed the version and deposed before the Court that after giving first blow accused started running. Ashwinbhai chased him at which time the accused turned around and gave two more knife blows to him. The initial disclosure appears to be that after receiving the first blow Ashwinbhai started running, upon which two more blows were given to him. The possibility of another person being involved, whom Ashwinbhai could not identify as he could not quite see who had given the blows cannot be completely ruled out. One may recall that the incident took place at about 9:30 at night. Though Ashwinbhai successfully identified the accused as Munir since he was residing in the same locality, it is not certain whether it is this very accused, who gave two more blows to him.

16. Fact, however, remains that the appellant herein had given at least one blow to the injured, Ashwinbhai.

17. Question, however, remains whether he was rightly convicted under Section 307 of the Indian Penal Code. Considering the nature of injuries, particularly, the one caused by first blow, it cannot be said that the same was life threatening. The injured person was carried on a scooter to the hospital. According to his own account, he never fainted during the treatment. He was discharged from the hospital in about 8 days. The doctor opined that he was discharged because he was fully cured. In the cross-examination, doctor admitted that the pulse rate of

the injured was about 78 beats per minute. He admitted that looking to the pulse rate, it cannot be stated that the injured was close to death. Considering all these aspects of the matter, I do not find that the conviction of the appellant under Section 307 of the Indian Penal Code was warranted.

18. Appellant, however, caused injury to Ashwinbhai. The nature of injury and the fact that it was healed within 8 days would show that it was simple hurt. It was caused with the help of a knife. The appellant should appropriately be convicted under Section 324 of the Indian Penal Code. The appellant appears to have remained in jail only for three months during the trial and pendency of the appeal.

19. Considering all these aspects of the matter, conviction of the appellant under Section 307 of the Indian Penal Code is converted to one under Section 324 of the Indian Penal Code. He is sentenced to undergo rigorous imprisonment for a period of one year and pay fine of Rs.500/-. In the event of default in payment of fine, he will undergo further simple imprisonment for a period of three months.

20. With this substitution, appeal is disposed of. Bail is cancelled.

(Akil Kureshi, J.)

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